

104TH CONGRESS
1ST SESSION

H. R. 917

To establish procedures for product liability actions.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1995

Mr. OXLEY introduced the following bill; which was referred to the Committee on the Judiciary and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish procedures for product liability actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Common Sense Prod-
5 uct Liability Reform Act”.

6 **SEC. 2. PREEMPTION.**

7 (a) GENERAL RULE.—This Act governs any product
8 liability action brought in any State or Federal court
9 against a manufacturer or product seller, on any theory,
10 for harm caused by a product. A civil action brought

1 against a manufacturer or product seller for commercial
2 loss shall be governed only by applicable commercial or
3 contract law.

4 (b) STATE LAW.—This Act supersedes State law only
5 to the extent that State law applies to an issue covered
6 by this Act. Any issue that is not covered by this Act shall
7 be governed by otherwise applicable State or Federal law.

8 (c) CONSTRUCTION.—Nothing in this Act shall be
9 construed to—

10 (1) waive or affect any defense of sovereign im-
11 munity asserted by any State under any law,

12 (2) supersede or affect any Federal law, except
13 the Federal Employees Compensation Act and the
14 Longshoremen's and Harborworker's Compensation
15 Act,

16 (3) waive or affect any defense of sovereign im-
17 munity asserted by the United States,

18 (4) preempt State choice-of-law rules with re-
19 spect to claims brought by a foreign nation or a citi-
20 zen of a foreign nation,

21 (5) affect the right of any court to transfer
22 venue or to apply the law of a foreign nation or to
23 dismiss a claim of a foreign nation or of a citizen
24 of a foreign nation on the ground of inconvenient
25 forum, or

1 (6) supersede any statute or common law which
2 creates a cause of action for civil damages or civil
3 penalties, cleanup costs, injunctions, restitution, cost
4 recovery, punitive damages, or any other form of re-
5 lief for contamination or pollution of the environ-
6 ment or the threat of such contamination or pollu-
7 tion.

8 For purposes of paragraph (6), the term “environment”
9 has the meaning given to such term in section 101(8) of
10 the Comprehensive Environmental Response, Compensa-
11 tion, and Liability Act of 1980 (42 U.S.C. 9601(8)).

12 (d) VACCINE INJURY.—

13 (1) GENERAL RULE.—To the extent that title
14 XXI of the Public Health Service Act establishes a
15 Federal rule of law applicable to a civil action
16 brought for a vaccine-related injury or death—

17 (A) this Act does not affect the application
18 of the rule of law to such an action, and

19 (B) any rule of law prescribed by this Act
20 in conflict with a rule of law of such title XXI
21 shall not apply to such an action.

22 (2) APPLICABILITY.—If there is an aspect of a
23 civil action brought for a vaccine-related injury or
24 death to which a Federal rule of law under title XXI
25 of the Public Health Service Act does not apply,

1 then this Act or otherwise applicable law (as deter-
2 mined under this section) will apply to such aspect
3 of such action.

4 (e) DRUGS AND DEVICES.—

5 (1) GENERAL RULE.—A product liability action
6 may not be brought against a manufacturer or prod-
7 uct seller of a drug (as defined in section 201(g)(1)
8 of the Federal Food, Drug, and Cosmetic Act (21
9 U.S.C. 321(g)(1)) or medical device (as defined in
10 section 201(h) of the Federal Food, Drug, and Cos-
11 metic Act (21 U.S.C. (h)) which caused the claim-
12 ant's harm where—

13 (A) such drug or device was subject to pre-
14 market approval by the Food and Drug Admin-
15 istration with respect to the safety of the for-
16 mulation or performance of the aspect of such
17 drug or device which caused the claimant's
18 harm or the adequacy of the packaging or label-
19 ing of such drug or device, and such drug was
20 approved by the Food and Drug Administra-
21 tion; or

22 (B) the drug is generally recognized as
23 safe and effective pursuant to conditions estab-
24 lished by the Food and Drug Administration

1 and applicable regulations, including packaging
2 and labeling regulations.

3 (2) EXCEPTION.—Paragraph (1) shall not
4 apply in any case in which the defendant, before or
5 after premarket approval of a drug or device—

6 (A) intentionally and wrongfully withheld
7 from or misrepresented to the Food and Drug
8 Administration information concerning such
9 drug or device required to be submitted under
10 the Federal Food, Drug, and Cosmetic Act (21
11 U.S.C. 301 et seq.) or section 351 of the Public
12 Health Service Act (42 U.S.C. 262) that is ma-
13 terial and relevant to the harm suffered by the
14 claimant, or

15 (B) made an illegal payment to an official
16 or employee of the Food and Drug Administra-
17 tion for the purpose of securing or maintaining
18 approval of such drug or device.

19 **SEC. 3. PRODUCT SELLER LIABILITY.**

20 (a) GENERAL RULE.—Except as provided in sub-
21 section (b), in a product liability action, a product seller
22 shall be liable to a claimant for harm only if the claimant
23 establishes that—

24 (1)(A) the product which allegedly caused the
25 harm complained of was sold by the product seller,

1 (B) the product seller failed to exercise reason-
2 able care with respect to the product, and

3 (C) such failure to exercise reasonable care was
4 a proximate cause of the claimant's harm,

5 (2)(A) the product seller made an express war-
6 ranty applicable to the product which allegedly
7 caused the harm complained of, independent of any
8 express warranty made by the manufacturer as to
9 the same product,

10 (B) the product failed to conform to the war-
11 ranty, and

12 (C) the failure of the product to conform to the
13 warranty caused the claimant's harm, or

14 (3) the product seller engaged in intentional
15 wrongdoing as determined under applicable State
16 law and such intentional wrongdoing was a proxi-
17 mate cause of the harm complained of by the
18 claimant.

19 For purposes of paragraph (1)(B), a product seller shall
20 not be considered to have failed to exercise reasonable care
21 with respect to a product based upon an alleged failure
22 to inspect a product where there was no reasonable oppor-
23 tunity to inspect the product in a manner which would,
24 in the exercise of reasonable care, have revealed the aspect
25 of the product which allegedly caused the claimant's harm.

1 (b) SPECIAL RULE.—In a product liability action, a
2 product seller shall be liable for harm to the claimant
3 caused by such product as if the product seller were the
4 manufacturer of such product if—

5 (1) the manufacturer is not subject to service of
6 process under the laws of the State in which the
7 claimant brings the action, or

8 (2) the court determines that the claimant
9 would be unable to enforce a judgment against the
10 manufacturer.

11 **SEC. 4. COMPLIANCE WITH FEDERAL AGENCY STANDARD.**

12 (a) IN GENERAL.—If a product liability action is
13 brought against a manufacturer for harm caused by a
14 product of the manufacturer, the manufacturer shall have
15 a complete defense to such action if the manufacturer can
16 show that as produced by the manufacturer the product
17 complied with a product standard established by a Federal
18 agency or that the label on such product complied with
19 a labeling requirement of a Federal agency, except that
20 if the plaintiff in such action can show that the manufac-
21 turer withheld information which directly relates to the
22 harm caused by the product, compliance with such label
23 requirement shall not be a defense for the manufacturer.

24 (b) VOLUNTARY STANDARDS.—If a product liability
25 action is brought against a manufacturer for harm caused

1 by a product of the manufacturer, the manufacturer shall
2 have a complete defense to such action if the manufacturer
3 can show that as produced by the manufacturer the prod-
4 uct complied with a voluntary product standard estab-
5 lished by a Federal agency unless the plaintiff in the ac-
6 tion can show that the harm was caused by the gross neg-
7 ligence or maliciousness of the manufacturer.

8 **SEC. 5. STANDARDS OF LIABILITY.**

9 (a) STRICT LIABILITY.—A manufacturer or product
10 seller may be held liable in a product liability action for
11 harm caused by a product only if the manufacturer or
12 product seller was at fault in connection with such harm.

13 (b) LIABILITY DEFENSES.—In a product liability ac-
14 tion the defenses of contributory negligence, comparative
15 negligence, assumption of risk, and product alteration or
16 misuse shall be available to the defendant to the action.

17 (c) SEVERAL LIABILITY FOR NONECONOMIC DAM-
18 AGES.—In any product liability action, the liability of each
19 manufacturer or seller of the product involved in such ac-
20 tion shall be several only and shall not be joint for non-
21 economic damages. Such manufacturer or seller shall be
22 liable only for the amount of noneconomic damages allo-
23 cated to such manufacturer or seller in direct proportion
24 to such manufacturer's or such seller's percentage of re-
25 sponsibility as determined by the trier of fact.

1 **SEC. 6. DAMAGES.**

2 (a) NON-ECONOMIC DAMAGES.—In a product liabil-
3 ity action the award of non-economic damages may not
4 exceed the greater of \$250,000 or an amount equal to
5 twice the actual economic harm caused.

6 (b) INSTALLMENT PAYMENT.—Damages awarded in
7 a product liability action may be paid, at the request of
8 the defendant and with the consent of the court, in install-
9 ments not greater than 1 year apart. Such installment
10 payments would cease if the plaintiff in the action dies
11 leaving no dependents.

12 (c) PUNITIVE DAMAGES.—

13 (1) GENERAL LIMITATION.—Punitive damages
14 may, to the extent permitted by applicable State law,
15 be awarded against a manufacturer or product seller
16 in a product liability action if the claimant estab-
17 lishes by clear and convincing evidence that the
18 harm suffered was the result of conduct manifesting
19 actual malice.

20 (2) LIMITATION ON AMOUNT.—The amount of
21 punitive damages that may be awarded for a claim
22 in any civil action subject to this section shall not
23 exceed 3 times the amount awarded to the claimant
24 for the economic injury on which such claim is
25 based, or \$250,000, whichever is greater.

1 (3) FUND.—If punitive damages are awarded in
2 a product liability action, 85 percent of such dam-
3 ages shall be deposited—

4 (A) if the action was brought in a Federal
5 court, in a fund in the United States Treasury
6 available for product liability actions brought in
7 Federal courts, or

8 (B) if the action was brought in a State
9 court, in the treasury of the State in which the
10 product harm involved in such action occurred.

11 **SEC. 7. ALCOHOL AND DRUG DEFENSE.**

12 (a) GENERAL RULE.—In any product liability action,
13 it shall be a complete defense to such action that—

14 (1) the claimant was intoxicated or was under
15 the influence of intoxicating alcohol or any drug, and

16 (2) the claimant as a result of such intoxication
17 or the influence of the alcohol or drug was more
18 than 50 percent responsible for causing the accident
19 or event which resulted in such claimant's harm.

20 (b) CONSTRUCTION.—For purposes of subsection
21 (a)—

22 (1) the determination of whether a person was
23 intoxicated or was under the influence of intoxicat-
24 ing alcohol or any drug shall be made pursuant to
25 applicable State law, and

1 (2) the term “drug” means any controlled sub-
2 stance as defined in the Controlled Substances Act
3 (21 U.S.C. 802(6)) that has been taken by the
4 claimant other than in accordance with the terms of
5 a lawfully issued prescription.

6 **SEC. 8. TIME LIMITATIONS ON LIABILITY.**

7 (a) STATUTE OF LIMITATIONS.—A product liability
8 action shall be brought within 2 years after the time the
9 individual who would be the claimant in such action dis-
10 covered, or in the exercise of reasonable diligence attained
11 the age of 18 and should have discovered, the harm and
12 its cause, except that any such action of a person under
13 legal disability may be filed within 2 years after the dis-
14 ability ceases. If the commencement of such an action is
15 stayed or enjoined, the running of the statute of limita-
16 tions under this section shall be suspended for the period
17 of the stay or injunction.

18 (b) STATUTE OF REPOSE FOR CAPITAL GOODS.—A
19 product liability action for harm caused by a product
20 which is a capital good shall be barred unless the com-
21 plaint is served and filed within 15 years of the date of
22 delivery of the product to its first purchaser or lessee who
23 was not engaged in the business of selling or leasing the
24 product or of using the product as a component in the

1 manufacture of another product. This subsection shall
2 apply only if—

3 (1) the court determines that the claimant has
4 received or would be eligible to receive compensation
5 under any State or Federal worker's compensation
6 law for harm caused by the product, and

7 (2) the harm caused by the product did not in-
8 clude chronic illness.

9 **SEC. 9. WORKERS' COMPENSATION OFFSET.**

10 (a) GENERAL RULE.—

11 (1) SUBROGATION.—If a product liability action
12 has been brought pursuant to this Act for harm
13 caused to an employee by a product, the employer of
14 such employee or the workers' compensation insurer
15 of such employer shall have a right of subrogation
16 against the manufacturer of such product or the
17 product seller to recover the sum of the amount of
18 workers' compensation benefits to which such em-
19 ployee is or would be entitled as determined by the
20 appropriate workers' compensation authority. To as-
21 sert such a right of subrogation, an employer or
22 workers' compensation insurer of an employer shall
23 provide written notice that it is asserting a right of
24 subrogation to the court in which such product li-
25 ability action has been brought. The employer or

1 workers' compensation insurer of such employer
2 shall not be required to be a necessary and proper
3 party to such product liability action.

4 (2) RIGHT OF SUBROGATION AGAINST A PAY-
5 MENT.—In any product liability action brought by
6 an employee against a manufacturer of a product or
7 a product seller or in any settlement of such an ac-
8 tion, the employer of such employee or the workers'
9 compensation insurer of such employer shall have an
10 opportunity to participate in such action and to as-
11 sert a right of subrogation upon any payment made
12 by such manufacturer or product seller in satisfac-
13 tion of a judgment in such action, in connection with
14 a settlement of such action, as consideration for a
15 covenant not to sue, or otherwise. Such employee
16 shall not make any settlement of such an action
17 with, or accept any payment from, such manufac-
18 turer or product seller without the written consent
19 of such employee's employer. No release to or agree-
20 ment with such manufacturer or product seller made
21 by such employee shall be valid or enforceable for
22 any purpose without such consent unless such em-
23 ployer or workers' compensation insurer of such em-
24 ployer is made whole for all workers' compensation
25 benefits paid to such employee.

1 (3) CLAIMANT'S HARM.—In a product liability
2 action brought for harm from a product by an em-
3 ployee, the manufacturer of such product or a prod-
4 uct seller may allege to the trier of fact that the
5 claimant's harm was caused by the fault of the
6 claimant's employer or a coemployee of the claimant.
7 If the manufacturer of a product or a product seller
8 makes such an allegation, the manufacturer or prod-
9 uct seller shall provide written notice to the em-
10 ployer involved in such allegation. Such employer
11 shall have the right to appear in such product liabil-
12 ity action, to be represented, to introduce evidence,
13 to cross-examine adverse witnesses, and to argue to
14 the trier of fact on such allegation as though such
15 employer were a party to such product liability ac-
16 tion. The issue of the cause of the claimant's harm
17 shall be the last issue submitted to the trier of fact
18 in such product liability action. If the trier of fact
19 finds by clear and convincing evidence that the
20 claimant's harm was caused by the fault of the
21 claimant's employer or a coemployee of such claim-
22 ant, the court shall reduce the damages awarded
23 against such manufacturer or product seller and, ex-
24 cept as provided in the last sentence, correspond-
25 ingly the subrogation lien of such employer by the

1 sum of the amount paid as workers' compensation
2 benefits to such employee and the present value of
3 all workers' compensation benefits to which such em-
4 ployee is or would be entitled for such harm as de-
5 termined by the appropriate workers' compensation
6 authority. Such manufacturer or product seller shall
7 have no further right, by way of contribution or oth-
8 erwise, against such employer with respect to such
9 harm. Such employer shall not lose its right of sub-
10 rogation if the employee's harm was the result of an
11 intentional tort committed against the claimant by a
12 coemployee of the claimant or for acts committed by
13 such coemployee outside the scope of normal work
14 practices.

15 (4) REIMBURSEMENT.—If in a product liability
16 action brought by an employee for harm from a
17 product the judgment is that the claimant's harm
18 was not caused by the fault of the claimant's em-
19 ployer or a coemployee of the claimant, the manufac-
20 turer of such product or product seller shall reim-
21 burse such employer or workers' compensation in-
22 surer of such employer for reasonable attorney's fees
23 and court costs, as determined by the court, in-
24 curred in the resolution of the subrogation claim.

1 (b) THIRD PARTY TORTFEASOR.—In any product li-
2 ability action brought by an employee in which damages
3 are sought for harm for which the person injured is or
4 would have been entitled to receive compensation under
5 any State or Federal workers' compensation law, no third
6 party tortfeasor may maintain any action for implied in-
7 demnity or contribution against such employee's employer,
8 any coemployee of such employee, or the exclusive rep-
9 resentative of such employee.

10 (c) CONSTRUCTION.—Nothing in this Act shall be
11 construed to affect any provision of a State or Federal
12 workers' compensation law—

13 (1) which prohibits—

14 (A) a person who is or would have been en-
15 titled to receive compensation under such law,
16 or

17 (B) any other person whose claim for bene-
18 fits under such law would have been derivative
19 from the claim of the person described in sub-
20 paragraph (A),

21 from recovering for harm caused by a product in any
22 product liability action other than a workers' com-
23 pensation claim against a present or former em-
24 ployer or workers' compensation insurer of such an

1 employer, any coemployee, or the exclusive rep-
2 resentative of the person who is injured, or

3 (2) which permits recovery based on a claim of
4 an intentional tort by an employer or any
5 coemployee if the claimant's harm was caused by
6 such a tort.

7 (d) STAY PENDING COMPENSATION DETERMINA-
8 TION.—In any product liability action brought by an em-
9 ployee in which damages are sought for harm for which
10 the person injured is or would have been entitled to receive
11 compensation under any State or Federal workers' com-
12 pensation law, such action shall, on application of the
13 claimant made at the claimant's sole election, be stayed
14 until such time as the full amount payable as workers'
15 compensation benefits has been finally determined under
16 such workers' compensation law. If the claimant elects to
17 bring a product liability action and not stay the claimant's
18 action until the full amount of such benefits has been fi-
19 nally determined by the appropriate workers' compensa-
20 tion authority, the court shall determine the amount of
21 workers' compensation benefits that has been or would be
22 payable if the amount had been determined by such an
23 authority.

1 (e) EFFECT OF VERDICT.—The verdict of any court
2 in a product liability action shall not be used as evidence
3 in any proceeding relating to workers' compensation.

4 (f) WRITTEN NOTICE.—A claimant in a product li-
5 ability action who is or may be eligible to receive com-
6 pensation under any State or Federal workers' compensa-
7 tion law shall provide written notice of the filing of the
8 product liability action to the claimant's employer within
9 30 days of such filing. The written notice shall include
10 information regarding the date and court in which the
11 product liability action was filed, the names and addresses
12 of all plaintiffs and defendants appearing on the com-
13 plaint, the court docket number if available, and a copy
14 of the complaint which was filed in the product liability
15 action.

16 **SEC. 10. DEFINITIONS.**

17 For purposes of this Act—

18 (1) the term “claimant” means any person who
19 brings a product liability action and any person on
20 whose behalf such an action is brought, including
21 such person's decedent if such an action is brought
22 through or on behalf of an estate or such person's
23 legal representative if it is brought through or on be-
24 half of a minor or incompetent,

1 (2) the term “malice” means conduct that is ei-
2 ther—

3 (A) specifically intended to cause serious
4 personal injury, or

5 (B) carried out with both a flagrant indif-
6 ference to the rights of the claimant and an
7 awareness that such conduct is likely to result
8 in serious personal injury,

9 (3) with respect to a product, the term “manu-
10 facturer” means—

11 (A) any person who is engaged in a busi-
12 ness to produce, create, make, or construct the
13 product and who designs or formulates the
14 product or has engaged another person to de-
15 sign or formulate the product,

16 (B) a product seller of the product who,
17 before placing the product in the stream of
18 commerce—

19 (i) designs or formulates or has en-
20 gaged another person to design or formu-
21 late an aspect of the product after the
22 product was initially made by another, and

23 (ii) produces, creates, makes, or con-
24 structs such aspect of the product, or

1 (C) any product seller not described in
2 subparagraph (B) which holds itself out as a
3 manufacturer to the user of the product,

4 (4) the term “product”—

5 (A) means any object, substance, mixture,
6 or raw material in a gaseous, liquid, or solid
7 state—

8 (i) which is capable of delivery itself,
9 in a mixed or combined state, or as a com-
10 ponent part or ingredient,

11 (ii) which is produced for introduction
12 into trade or commerce,

13 (iii) which has intrinsic economic
14 value, and

15 (iv) which is intended for sale or lease
16 to persons for commercial or personal use,
17 and

18 (B) does not include—

19 (i) human tissue, human organs,
20 human blood, and human blood products,
21 or

22 (ii) electricity, water delivered by a
23 utility, natural gas, or steam,

24 (5) the term “product seller”—

25 (A) means a person—

1 (i) who sells, distributes, leases, pre-
2 pares, blends, packages, or labels a product
3 or is otherwise involved in placing a prod-
4 uct in the stream of commerce, or

5 (ii) who installs, repairs, or maintains
6 the harm-causing aspect of a product, and

7 (B) does not include—

8 (i) a manufacturer,

9 (ii) a seller or lessor of real property,

10 (iii) a provider of professional services
11 in any case in which the sale or use of a
12 product is incidental to the transaction and
13 the essence of the transaction is the fur-
14 nishing of judgment, skill, or services,

15 (iv) any person who acts only in a fi-
16 nancial capacity with respect to the sale of
17 a product, or

18 (v) any person who leases a product
19 under a lease arrangement in which the se-
20 lection, possession, maintenance, and oper-
21 ation of the product are controlled by a
22 person other than the lessor,

23 (6) the term ‘punitive damages’ means damages
24 in addition to compensation for actual injury suf-
25 fered, for purposes of imposing punishment for con-

1 duct engaged in with malice and to deter similar fu-
2 ture conduct, but such term does not include com-
3 pensation for actual injury, and

4 (7) the term “State” means any State of the
5 United States, the District of Columbia, the Com-
6 monwealth of Puerto Rico, the Virgin Islands,
7 Guam, American Samoa, the Northern Mariana Is-
8 lands, the Trust Territory of the Pacific Islands, and
9 any other territory or possession of the United
10 States, or any political subdivision thereof.

11 **SEC. 11. EFFECTIVE DATE.**

12 This Act shall apply with respect to product liability
13 actions which are brought after the date of the enactment
14 of this Act.

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